

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

TONY LUSBY,


Plaintiff,

vs.

**THE PROCTER & GAMBLE
MANUFACTURING CO.,**

Defendant.

No. 03-1170 T/An

FILED BY 
05 MAY 25 AM 8:19
D.C.
ROBERT R. DI TROLIO
CLERK OF U.S. DIST. CT
W.D. OF TN.-JACKSON

**ORDER DENYING MOTION TO COMPEL PLAINTIFF TO AMEND
DISCOVERY RESPONSES**

Before the Court is Defendant's Motion to Compel Plaintiff to Amend Discovery Responses filed on April 26, 2005. For the reasons set forth below, the Motion is **DENIED** without prejudice.

Defendant served its First Set of Interrogatories and Requests for Production of Documents to Plaintiff on November 23, 2004. Plaintiff responded to the discovery requests on January 24, 2005, and Defendant argues that these responses were deficient. As such, Defendant's counsel mailed a letter to Plaintiff's counsel on March 24, 2005 "addressing the deficiencies in Plaintiff's interrogatory responses." (Mem. in Supp. of Mot. to Compel, at 2). Specifically, "Defendant's counsel requested that Plaintiff correct these deficiencies on or before April 1, 2005, by providing amended interrogatory responses." (*Id.*). Defendant's counsel wrote that Plaintiff's counsel was welcome to discuss the alleged deficiencies with Defendant's counsel

at her convenience, but after not hearing from Plaintiff's counsel, Defendant filed the instant motion.

After due consideration, the Court concludes that Defendant's counsel failed to comply with Local Rules regarding consultation of counsel prior to filing the instant motion. Local Rule 7.2 provides:

Consultation by Counsel. All motions, including discovery motions, but not including motions pursuant to Fed. R. Civ. P. 12, 56, 59, and 60 shall be accompanied by a certificate of counsel (with one copy) affirming that, after consultation between the parties to the controversy, they are unable to reach an accord as to all issues or that all other parties are in agreement with the action requested by the motion. Failure to file an accompanying certificate of consultation may be deemed good grounds for denying the motion.


The certificate must contain the names of participating counsel and the date and manner of consultation. The burden will be on counsel filing the motion to initiate the conference upon giving reasonable notice of the time, place and specific nature of the conference. If an opposing counsel or party refuses to cooperate in the conduct of a conference, counsel must file certificate to that effect, setting out counsel's efforts to comply with this rule.

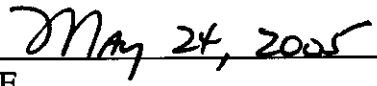
Local Rule 7.2(a)(1)(B) for the Western District of Tennessee.

Local Rule 7.2 requires that counsel for the parties consult and make a good faith effort to resolve the discovery dispute. In this matter, there was no consultation, and it does not appear defense counsel made any effort to arrange a conference to see if the dispute could be resolved before filing the instant motion with the Court. The Court concludes that defense counsel only sent a letter which invited Plaintiff's counsel to contact her if Plaintiff's counsel wanted to discuss the alleged deficiencies. A month later, when plaintiff's counsel did not respond, defense counsel filed this motion. More effort to resolve the dispute is required to meet Local Rule 7.2's good faith standard.

For these reasons, the Court concludes that Defendant did not comply with the letter and spirit of Local Rule 7.2(a)(1)(B). As such, the Motion is **DENIED** without prejudice. Defendant may re-file the instant motion if and when there is compliance with Local Rule 7.2.

IT IS SO ORDERED.


S. THOMAS ANDERSON
UNITED STATES MAGISTRATE JUDGE


DATE



Notice of Distribution

This notice confirms a copy of the document docketed as number 94 in case 1:03-CV-01170 was distributed by fax, mail, or direct printing on May 26, 2005 to the parties listed.

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Honorable James Todd
US DISTRICT COURT